UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TRAVIS BROWN, ET AL.,	)	
	)	
Plaintiffs	)	
v.	)	Civ. No. 96-242-B
	)	
AUGUSTA SCHOOL DEPARTMENT, ET AL.,	)	
	)	
	)	
Defendants	)	

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

On November 1, 1996, Plaintiffs, Travis Brown and John Farnsworth, filed suit against Defendants, the Augusta School Department ("ASD" or "Defendant") and various other parties, alleging that they were sexually abused while students in the Augusta school system. Plaintiffs alleged negligence, negligent and intentional infliction of emotional distress, and violations of 42 U.S.C. § 1983 and Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688. Presently before the Court is Plaintiffs' Motion to Enforce Settlement Agreement. For the reasons stated below, Plaintiffs' motion is GRANTED.

I. BACKGROUND

In early 1998, while Defendants' motions for summary judgment were pending, the parties informed the Court that they were engaged in settlement negotiations and requested that the Court refrain from issuing a summary judgment order until further notice from the parties. On March 24, 1998, the parties notified the Court that a settlement had been effected by mutual agreement of the parties. The Court then ordered that counsel memorialize the settlement within

thirty days and file a stipulation of dismissal with prejudice and without costs on or before April 23, 1998. Completion of the settlement agreement, at least insofar as Defendant ASD was concerned, was contingent on the appropriation of settlement funds by the Augusta City Council. On April 6, 1998, the Augusta City Council voted 4-3 in favor of a Resolve, Order 510, authorizing a supplemental appropriation to the Department of Education's budget in the amount of $315,051.00 for the purpose of resolving the suit. Pursuant to the Augusta City Charter, this Resolve became effective ten days after its passage, on April 16, 1998. On April 13, 1998, Plaintiffs filed a Motion for Approval of Settlement, informing the Court that approval of the Augusta City Council had been obtained. Defendants did not file a response to Plaintiffs' motion, and the Court, after hearing from all parties at a telephone conference, entered an Order Approving Final Settlement on April 13, 1998.

On the same day the Court entered its Order approving the settlement agreement, ten or more citizens of Augusta filed petitions with the Augusta City Clerk's office seeking the referral to referendum of three resolves: (1) "Shall Augusta City Council Order 510 appropriating $315,051.00 to settle a civil lawsuit contending negligence filed against the Augusta School Department be rescinded?"; (2) "Shall Augusta City Council Order 510 which reads: Be it resolved, that there is hereby a supplemental appropriation, with funds to come from the City's Undesignated Fund Balance, in the amount of $315,051.00 (to add to the existing Department of Education FY98 appropriation) for the purpose of resolving A [sic] legal matter be rescinded?"; and (3) "Shall the Augusta City Council require continuation of the legal process to determine if a pending lawsuit against the Augusta School Department has merit before taking action on the settlement?" At a City Council meeting on May 4, 1998, Charles Moreshead, counsel to the City

of Augusta ("corporation counsel"), offered a written opinion to the City Council recommending that only the second question be put out to referendum. At that same meeting, the City Council directed the City Clerk to have copies of the second petition printed for circulation among the voters for collection of signatures.

In a telephone conference on April 16, 1998, ASD informed the Court that it would not pay its portion of the settlement agreement without a court order in light of Augusta citizens' attempt to put the City Council's Resolve to a referendum vote. Plaintiffs asked the Court to enter such an order, which the Court refused to do until appropriate pleadings had been filed on the matter. In response, Plaintiffs filed the motion currently before the Court seeking enforcement of the settlement agreement.

II. DISCUSSION

A. Does the Court have jurisdiction to enforce the settlement agreement?

In opposing Plaintiffs' motion, Defendant first argues that the Court lacks jurisdiction to enforce the settlement agreement. "The federal courts have jurisdiction to enforce settlement agreements when necessary 'to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.'" In re Mal De Mer Fisheries, Inc., 884 F. Supp. 635, 638 (D. Mass. 1995) (quoting Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 380 (1994)). The parties have not yet filed a stipulation of dismissal and no final order has been entered dismissing Plaintiffs' underlying claims against the Augusta School Department.[1] The Court, therefore, continues to have jurisdiction over this case insofar as the

[1] The claims against Defendants Raymond Taylor, Earl Mann, and Robert McGinley, on the other hand, were dismissed with prejudice pursuant to the Court's Order of May 26, 1998.

Augusta School Department is concerned. The Court, however, cannot proceed to consider the merits of Plaintiffs' claims until the validity of the settlement agreement is determined. Thus, the Court is persuaded that assertion of jurisdiction over Plaintiffs' Motion to Enforce a Settlement Agreement is necessary to enable the Court to manage its proceedings and function successfully. See, e.g., Faust v. United States, 33 Fed. Cl. 807, 809 (Fed. Cl. 1995). In addition, upon representation by both parties that a settlement had been reached, the Court removed this case from the trial list, approved the settlement agreement, and ordered the parties to file a stipulation of dismissal. This alone would ordinarily provide sufficient justification for asserting jurisdiction. See Mal De Mer, 884 F. Supp. at 638 (finding that court's continuance of case upon notification that a settlement had been reached sufficiently implicated court's ability to manage its proceedings, vindicate its authority, and effectuate its decrees).

B. Does an enforceable settlement agreement exist?

Defendant argues that the parties did not enter into a valid and enforceable contract. Specifically, Defendant claims that approval of the settlement agreement by popular referendum was a condition precedent to its performance. Defendant concedes that the agreement is silent as to the effect of a citizens' initiative and that the only explicit condition to performance adopted by the parties was the approval of the City Council. However, it argues that approval by citizen referendum is, in essence, part and parcel of the "approval of the City Council" and that until such approval is obtained no enforceable agreement exists. The Court disagrees.

On April 10, 1998, the Court conducted a telephone conference involving all parties. At that time Defendants did not state, or even suggest, that approval of the citizens of Augusta by popular referendum was a condition precedent to the formation of a contract. Plaintiffs' Motion

to Approve Settlement Agreement made no reference to citizen approval and stated that the only barrier to the execution of an agreement was a formal order of the City Council appropriating funds on behalf of the City of Augusta. Defendants did not file an opposition to Plaintiffs' motion and, in fact, informed the Court that the facts stated in the motion were accurate. Relying on these representations, the Court entered an Order Approving Final Settlement on April 13, 1998. In light of these considerations and Defendant's failure to provide evidence of mutual intent to the contrary, the Court is persuaded that approval of the settlement by citizen referendum was not a condition precedent to the execution of the settlement agreement and that the parties did in fact enter into a valid settlement agreement that took effect once the City Council voiced its approval on April 6, 1998. The Court considers next whether that agreement was subsequently invalidated by a purported citizen referendum effort.

C. Can the referendum process forestall enforcement of the settlement agreement?

Defendant argues that the initiation of the referendum procedure suspended the City Council's Order 510 and that the settlement approval and appropriation of funds is therefore invalid.

"In Maine, the constitutional grant of the power of referendum permits a municipality to 'establish the direct initiative and people's veto for the electors of such city in regard to its municipal affairs . . . .'" Albert v. Town of Fairfield, 597 A.2d 1353, 1354 (Me. 1991) (quoting Me. Const., art IV, pt. 3, § 21). Pursuant to this grant of power, the City of Augusta has established an initiative and referendum process "in regard to its municipal affairs." Augusta Code of Ordinances Art. II ("Augusta Code"), §§ 7-26 - 7-40. First, a petition must be signed by ten qualified voters of the city and presented to the City Clerk. The petition is then turned over

to the City Council which submits it to the municipal corporation counsel for review. If the corporation counsel concludes that the proposal is not in conflict with the general laws or Constitution of the State of Maine, or the Charter or ordinances of the City of Augusta, the City Clerk must print the petitions and deliver them to the proponents of the referendum. Once the petitions are "delivered," the proponents have sixty days to collect signatures amounting to at least twenty percent of the total number of local votes cast for the governor at the last state gubernatorial election. If the requisite number of signatures is collected, the proposal is submitted to the voters of the city at the next regular municipal election. To date, a petition signed by ten Augusta citizens has been submitted to the City Council, reviewed by corporation counsel, and printed for circulation. It is the Court's understanding that the petitions have not yet been picked up by the referendum's proponents and that the sixty-day window for collecting signatures does not begin to run until or unless they do so.

Although the Augusta Code does contain a provision regarding the impact of the referendum process on existing ordinances, orders, or resolves, it is hardly a model of clarity. Section 7-37 provides:

> Whenever in accordance with this article a petition for the reference to the people any ordinance, order, resolve or question passed by the Council [sic], and the required number of valid signatures has been obtained thereon for its presentation to the Council, the same shall be suspended from going into operation until it has been submitted to a vote of the people and has received the affirmative vote of the majority of the voters on the question.

Augusta Code § 7-37.

While the first clause of this sentence is indecipherable, it is clear that a resolve is not suspended until a petition has the required number of signatures and is "presented" to the Town

Council. Plaintiffs argue that the phrase "the required number of valid signatures" refers to the collection of signatures of twenty percent of the town's voters. In other words, the presentation to the Town Clerk of a petition with ten signatures, the initial approval of the Town Council and corporation counsel, and the subsequent collection of signatures of twenty percent of voters are conditions precedent to the suspension of an otherwise valid Council resolve. Defendants, on the other hand, argue that the phrase "the required number of signatures" refers to the ten signatures of the referendum's proponents, and, therefore, that a resolve is suspended when the petition is initially submitted to the Town Council.

Although a petition is arguably "presented" to the Council twice, once initially by ten proponents, and again after the signatures necessary to send the proposal to a general election have been obtained, the Court is persuaded that the above quoted provision refers to the second "presentation" and that Plaintiffs' interpretation is the preferable one. Section 7-30(d) refers to the initial offering of a petition by ten voters as an "introduction" of the petition to the City Council. Augusta Code § 7-30(d). Nowhere in section 7-30(d), which addresses the initial delivery of the petition to the Town Council and subsequent review by corporation counsel, is the verb "to present" used. Id.[2] On the other hand, section 7-30(f), addressing delivery of the

[2] Section 7-30(d) provides:

> Upon the request of the above mentioned ten (10) qualified voters of the city, made in writing, the City Clerk shall introduce on the agenda of the next regular meeting of the City Council a copy of the petition and a copy of the proposed ordinance, order, or resolve to be used for invoking initiative or referendum consideration. The City Council shall cause such petition and the copy of the proposed ordinances, order, or resolve to be submitted for review by Corporate Counsel. Corporation Counsel shall submit to the City Council at its next regular meeting a written opinion that the proposed ordinance, order or resolve is or is not in conflict with the general laws or the Constitution of Maine or Charter or

petition to the Town Council after the sixty day window for obtaining signatures expires, refers to such delivery as a "presentation" to the Town Council, suggesting that it is this second delivery to the Town Council that the drafters of the Augusta Code had in mind when they adopted section 7-37. Augusta Code § 7-30(f).[3]

Strong policy considerations also counsel in favor of Plaintiffs' interpretation of section 7-37. Were Defendant's interpretation to prevail, ten individuals would have the power to suspend valid town ordinances indefinitely simply by presenting a petition to the Town Clerk. Suspension would take effect before corporation counsel or the Town Council had an opportunity to assess the legality of the initiative. In light of these considerations, the Court is persuaded that under the Augusta Code an otherwise valid ordinance or resolve is not suspended until a petition containing the signatures of twenty percent of eligible voters is presented to the Town Council for placement on the ballot at the next general election.

The petition at issue here has not yet been presented to the Town Council for placement

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> ordinances of the City of Augusta. The City Clerk shall thereafter forthwith cause to be printed and delivered to such voters, at their expense, an adequate supply of petitions prepared for the voters of the city for invoking such proposed or enacted ordinance, order, resolve or question.

Augusta Code § 7-30(d) (emphasis added).

[3] Section 7-30(f) provides:

> At the expiration of sixty (60) days from the date of delivery [to proponents] of such petitions, not including Sundays and legal holidays, the City Clerk shall declare the petition closed, shall check each signature against the voting list and shall at the next regular meeting of the Council thereafter present to such body the petitions with verification of the number of valid signatures attached thereto.

Augusta Code § 7-30(f) (emphasis added).

on the ballot. In fact, the sixty day window for collecting voters' signatures has not been triggered as the referendum's proponents have yet to pick the petition up from the Town Clerk for circulation. Therefore, the Town Council's Resolve 510 is effective and binding. The Court need not speculate on what impact, if any, the placement of an appropriately endorsed referendum petition on the ballot would have on the otherwise valid and enforceable agreement entered into between the parties.

III. CONCLUSION

For the reasons stated above, Plaintiffs' motion is GRANTED. Defendant ASD is hereby ORDERED to comply with the terms of the settlement agreement.

SO ORDERED.

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MORTON A. BRODY
United States District Judge

Dated this 21st day of July, 1998.